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Richard C. Duncan

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1953

Nov. 16

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CONCORD, N.H.

Dr. Arthur B. Howard,
Acting Superintendent,
State Hospital
Concord, New Hampshire

Dear Dr. Howard:

In reply to your memorandum of November 10, Laws of 1953, c. 114, s. 3, authorizes the Commission of Mental Health to release any sexual psychopath on parole for not more than one year at a time upon recommendation of the director that he is improved, is no longer dangerous to himself or others, and with the approval of the committing court. This section further provides that the Commission may establish the terms and conditions of the parole.

It is my opinion that this authority is sufficiently broad to empower the Commission to provide such conditions as it feels militate in the best interests of a continued recovery and normal adjustment of the individual involved, which might very well include permission to the individual to go without the limits of the State of New Hampshire. In so saying, I am aware of the fact that parole violations, beyond the state, present certain difficulties in the way of jurisdiction, but I can see no reason why the Commission may not require the parolee to report to it within the State of New Hampshire on specified occasions and to further provide that a failure to so report shall constitute basis for revocation of parole.

Our basic sexual psychopath statute, Laws of 1949, c. 314, provides expressly for a civil commitment, and while the arrest of a parole violator is authorized by Laws of 1953, c. 114, s. 3, extradition would not lie for a sexual psychopath, since being a sexual psychopath is not a crime by definition.

It is doubtful whether an agreement on the part of the parolee to waive extradition should he become a parolee

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violation would be valid if extradition is improper in the first place, as individual authority in advance cannot operate to confer jurisdiction upon the courts where there is no criminal jurisdiction by legislative mandate.

However, it should be possible to notify similar authorities in Massachusetts and to provide in the agreement with the parolee that he will report during all except the annual periods to Massachusetts authorities. In the alternative, the parolee might be directed to return to New Hampshire at such time or times during the year as the Court and Commission order, in which event, if the parolee does not so return, he becomes a violator and subject to arrest in New Hampshire. All of this makes it unlikely that he would return to New Hampshire, which is the end of our problem here, the problem then being that of the state in which he happens to reside. It is for this reason that I suggested notification of the authorities in the state in which he expects to reside so that they may be aware of the retention problem and of the record involved.

Very truly yours,

Louis C. Wyman
Attorney General

LCW:ET